

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

19 CR 490 (RMB)

5 JEFFREY EPSTEIN,

Conference

6 Defendant.

7 -----x

New York, N.Y.

8 July 8, 2019

2:00 p.m.

9 Before:

10 HON. RICHARD M. BERMAN

11 District Judge

12  
13 APPEARANCES

14  
15 GEOFFREY S. BERMAN

United States Attorney for the

16 Southern District of New York

ALEXANDER ROSSMILLER

17 MAURENE R. COMEY

ALISON G. MOE

18 Assistant United States Attorneys

19 REID H. WEINGARTEN

20 MARTIN G. WEINBERG

MARC FERNICH

21 Attorneys for Defendant

22 Also Present:

23 AMANDA YOUNG - Special Agent FBI

24 PAUL BYRNE - NYPD

KEYANA POMPEY - Probation Officer

25 LEA HARMON - Probation Officer

1 (Case called)

2 THE COURT: Good afternoon.

3 I think I'm pretty much up to speed as to where you  
4 are in the sense that I am aware that you have been before  
5 Magistrate Judge Pitman earlier this morning and up to some few  
6 minutes ago for purposes of presentment, arraignment, and some  
7 preliminary discussion of bail. Is that accurate?

8 MR. ROSSMILLER: That's correct, your Honor. I don't  
9 want to speak for defense counsel, but my understanding is they  
10 expect to put in some sort of written submission and return to  
11 argue the rest of the bail hearing on Thursday before Judge  
12 Pitman at 2:00. That is, if your Honor refers the bail hearing  
13 to Judge Pitman on that basis as well.

14 THE COURT: I might just take that bail application  
15 before me. We'll figure out a time when that would be  
16 comfortable for all of you. How is that?

17 MR. WEINGARTEN: That's fine with the government, your  
18 Honor.

19 THE COURT: I have a few items on my list. I want to  
20 make mention, I'm sure Magistrate Judge Pitman did, of our  
21 presumption of innocence. Even though in some of these  
22 discussions, and probably more so when we get to bail, it may  
23 sound like we are talking about merits of the case, it's  
24 important that we underscore that the presumption of innocence  
25 pertains to Mr. Epstein, now and until such time, if it comes,

1 that there is a guilty determination by a jury or by the Court,  
2 that he is presumed to be innocent.

3 I did have these questions. One has to do with  
4 persons who are categorized as victims. I want to get some  
5 assurance from the U.S. Attorney's office that they have been  
6 notified about this case and that you will keep them abreast of  
7 developments in this case.

8 MR. ROSSMILLER: Yes, your Honor, we are acutely aware  
9 of our obligations to the victims in this case. We have  
10 notified them and we expect to continue to do so as the case  
11 moves forward.

12 THE COURT: Second, for my background, I am aware that  
13 there are certain conditions that attach to Mr. Epstein's sex  
14 offender status resulting from his Florida state prosecution in  
15 or about 2008. One result is that under New York law --  
16 correct me if I'm wrong about any of this -- he is considered  
17 to be at high risk of committing another sex crime with minors.  
18 Is that a fair characterization of his sex offender status?

19 MR. ROSSMILLER: Your Honor, as the government set  
20 forth in its submission to Judge Pitman, and we copied this  
21 Court, it is our understanding that the defendant is a tier 3  
22 sex offender in New York and that that is characterized as  
23 high-risk individual.

24 THE COURT: The question that I have is what are the  
25 implications, if any, of the search conducted by the U.S.

1 Attorney's office over the weekend of Mr. Epstein's residence  
2 on East 71st Street for the terms and conditions of his sex  
3 offender status, if any? Are there any consequences or  
4 relationship between what was uncovered and what he is obliged  
5 to do?

6 MR. ROSSMILLER: May I have one moment, your Honor?

7 THE COURT: Yes.

8 MR. ROSSMILLER: Your Honor, in response to that  
9 question, at the outset I should say that we don't have  
10 particular interaction with state authorities with respect to  
11 those types of notifications. We are, I would say, in the  
12 early stages of reviewing those materials. With respect to the  
13 defendant's obligations or potential consequences in the New  
14 York State system, we certainly will notify whichever  
15 authorities are appropriate. I don't think that we have a role  
16 other than that.

17 I will say that they are extremely concerning with  
18 respect to bail here, with respect to the conduct here, and I  
19 expect we will get into that more in our submissions and bail  
20 argument.

21 THE COURT: By the way, if defense counsel wants to  
22 jump in at any point, feel free to do that?

23 MR. WEINGARTEN: On that, we have not seen the  
24 pictures.

25 THE COURT: I haven't either.

1           MR. WEINGARTEN: I understand. It is our expectation  
2 that they are ancient, that they are pre his spending time in  
3 prison, and/or they are erotic pictures of adults who  
4 voluntarily engaged in that conduct.

5           THE COURT: I have a question about the Southern  
6 District of Florida nonprosecution agreement dated probably in  
7 2008 -- is that correct?

8           MR. ROSSMILLER: It's dated in 2007, your Honor.

9           THE COURT: Is that a public document?

10          MR. WEINGARTEN: It is, your Honor. It's been  
11 publicly filed in connection with other civil litigation.

12          THE COURT: Does that agreement bear on in any way the  
13 search and results of the search that were conducted at Mr.  
14 Epstein's townhouse over the weekend?

15          MR. ROSSMILLER: Not in ways that I am aware of now,  
16 your Honor. Again, we are very much in progress on the search.  
17 We will continue to consider any other implications beyond this  
18 case as we continue to review those materials.

19          On a separate note, your Honor, I want to add the  
20 government noted it is aware of its victim obligations. In  
21 terms of notification, we have made notification to individuals  
22 that we are in particular aware of. We also have listed a  
23 phone number for victims to be in touch with the FBI, with the  
24 U.S. Attorney's office. We have also put a website up and have  
25 asked victims to be in touch with us through those sources as

1 well. That is just to round out the notification that the U.S.  
2 Attorney's office has made.

3 MR. WEINGARTEN: May I be heard briefly on that?

4 THE COURT: Sure.

5 MR. WEINGARTEN: For us, your Honor, the NPA is the  
6 center of the universe for everything, search included, because  
7 the NPA was the result of an extensive 3-year investigation by  
8 law enforcement in Florida. In essence, the Feds made Mr.  
9 Epstein plead to a state offense and they declined prosecution  
10 federally, and that is translated in the NPA. Mr. Epstein did  
11 his time, Mr. Epstein is on the registration list, and Mr.  
12 Epstein paid the alleged victims.

13 As I am sure you have noted from the indictment, that  
14 conduct too is an ancient history. That conduct is 2002 to  
15 2005. It is our belief that this is basically a re-do. This  
16 is basically the Feds today, not happy with what happened in  
17 the decision that led to the NPA, redoing the same conduct that  
18 was investigated 10 years ago and calling it, instead of  
19 prostitution, calling it sex trafficking. We think that is the  
20 heart of everything, and that will be the centerpiece of our  
21 defense, at least legally.

22 THE COURT: My understanding of what the government is  
23 asserting is that the episodes that occurred in Manhattan were  
24 not included in the nonprosecution agreement in Florida and  
25 that there is a separate basis not only for a sex trafficking

1 count but also for a sex trafficking conspiracy count.

2 MR. WEINGARTEN: We have had good conversations with  
3 the prosecutors, and we like and respect them. We are looking  
4 forward to getting discovery. We are interested to see whether  
5 the prosecutors in Florida, who are now under severe criticism  
6 10 years later, steered the alleged victims to New York,  
7 whether or not they violated their responsibilities under the  
8 NPA.

9 THE COURT: Whether the federal prosecutors in Florida  
10 violated their terms and conditions?

11 MR. WEINGARTEN: That will certainly be germane.

12 THE COURT: Is that the point?

13 MR. WEINGARTEN: Yes.

14 THE COURT: Got it.

15 MR. ROSSMILLER: Your Honor, if I could very briefly  
16 respond to those points?

17 THE COURT: Sure.

18 MR. ROSSMILLER: I expect this will be briefed and  
19 argued on Thursday. I don't intend to go into extensive  
20 details about that. I just want to flag for the Court that  
21 defense counsel is saying that this conduct is ancient. What  
22 he is not saying is it is beyond the statute of limitations,  
23 because it is not.

24 Second, the allegation that this is some kind of a  
25 conspiracy within the Department of Justice is just false.

1 There is no evidence to support that. The investigation was  
2 begun and conducted entirely separate from any other district.  
3 It began in the Southern District of New York.

4 Certainly there is evidence that was gathered that is  
5 consistent with and even overlapping with the prior  
6 investigation. But as the Court noted, in particular an entire  
7 count of this indictment is with respect to New York victims.  
8 And that is before we even get to the fact that the  
9 nonprosecution agreement does not bind the Southern District of  
10 New York.

11 THE COURT: I was going to ask you about that too.  
12 Now that you have mentioned the topic, explain that, would you.

13 MR. ROSSMILLER: Yes, your Honor. I do expect that we  
14 can brief this, but the short version is that this prosecution  
15 is not precluded by the nonprosecution agreement entered into  
16 by the defendant in the Southern District of Florida. That  
17 agreement expressly referred to that federal district. It  
18 didn't purport to bind any other office or district.

19 It is well-settled in the Second Circuit that a plea  
20 agreement in one U.S. Attorney's office does not bind another  
21 unless otherwise stated. That is even if, based on case law,  
22 the agreement refers generally to "the government." Again,  
23 additionally, as set forth in the indictment returned by the  
24 grand jury, the substantive count alleges acts occurring in New  
25 York and alleges New York-based victims.



1           That is in spite of the fact that the Southern  
2 District is not bound, is not a signatory to, and otherwise has  
3 no connection to the NPA. And there is no evidence that we  
4 have come across that the Southern District of New York was  
5 consulted, asked, involved, notified as far as we have seen.

6           For those reasons and others I'm sure we will brief,  
7 we don't think the NPA applies to us.

8           MR. WEINBERG: If I may reply briefly, your Honor?

9           THE COURT: Yes.

10          MR. WEINBERG: I have been one of Mr. Epstein's  
11 counsel through the CVRA litigation which started in 2008 and  
12 continues. In fact, our briefing is today. The NPA provided  
13 him with immunity for any offenses arising from a joint  
14 FBI/grand jury/U.S. Attorney investigation that led to a  
15 decision by Mr. Epstein to plead to a higher state offense than  
16 the state prosecutors contemplated. He went to jail, signed an  
17 agreement, and has lived up to its terms 100 percent.

18          We have seen in the paperwork of the CVRA, in the  
19 Southern District of Florida, in writing at docket 205-2 the  
20 government's motion to dismiss CVRA, urging that the witnesses  
21 there go to the Southern District of New York and essentially  
22 try to motivate them to prosecute for the very same conduct, in  
23 other words, the conduct that Mr. Epstein was immunized,  
24 including travel between two states, telephonic communications  
25 between two states. Florida immunized him for the same travel

1 and telephonic communications as well as the 1591 category.

2 In addition, the Department of Justice reviewed the  
3 NPA on several occasions in 2008 and essentially confirmed that  
4 the exercise of discretion shown in Florida was appropriate.  
5 But the most important thing is that there was communication  
6 between the prosecutors in Florida, perhaps through prosecutors  
7 in Georgia that took over the case because the Florida  
8 prosecutors were recused as a result of Judge Marrah's  
9 decisions in the CVRA case.

10 We know the government is relying in part on evidence  
11 that was generated by the Southern District of Florida case  
12 back in 2007. They have talked about message pads, telephone  
13 records. They are the same message pads and telephone records  
14 that reflect conduct that was exclusively 15, 16, 17 years ago.  
15 So we do have a principal position that we will put to the  
16 Court at the appropriate time regarding the legality of this  
17 prosecution and whether or not it is appropriately barred.

18 I can say as a criminal defense lawyer of 45 years,  
19 when there is an interstate wire, mailing, travel, and there is  
20 one district that is conducting an investigation, you negotiate  
21 with that district and count on the Department of Justice to  
22 what it does every day decade after decade after decade, which  
23 is not to go to the second jurisdiction that received the mail  
24 that was sent from the immunizing jurisdiction and have a  
25 prosecution on the very same conduct. We will be briefing

1 that.

2 THE COURT: Do you anticipate that there is going to  
3 be any discussion here about the legality of the NPA?

4 MR. WEINBERG: Not the legality of the NPA. I think  
5 the discussion here is going to be about its scope.

6 THE COURT: From the defense, yes. You don't think  
7 you expect to hear anything from the government, for example?

8 MR. WEINBERG: In the Southern District case, the CVRA  
9 case, maybe two weeks ago the Northern District of Georgia  
10 prosecutors, who are proxy for the Southern District of  
11 Florida, filed the submission before District Judge Marrah in  
12 the CVRA case totally supporting the constitutionality and  
13 legality of the NPA, their discretion to enter into it, and  
14 that there absolutely has never been a charge that Mr. Epstein  
15 ever did anything other than fully perform his end as a citizen  
16 who is expecting the benefits of a contract that he lived up  
17 to.

18 THE COURT: I thought there had been some contention  
19 that the way that the victims vis-a-vis the Florida NPA were  
20 dealt with or not dealt with was one basis for attacking the  
21 legality of that arrangement.

22 MR. WEINBERG: The petitioners are vigorously and have  
23 vigorously for many years challenged, many years starting quite  
24 frankly after Mr. Epstein performed his obligations to go to  
25 jail and challenged it, claiming that there was no consultation

1 prior to the government's entering the agreement.

2           The Department of Justice at the time did not believe  
3 the CVRA extended absent a federal charge. The predicate is a  
4 federal crime that harms a victim. The petitioners have  
5 vigorously asserted a different position. Judge Marrah, in a  
6 summary judgment motion, agreed with the petitioners as to the  
7 fault of the government in not conferring. The issue of remedy  
8 is before Judge Marrah at the present time, your Honor.

9           THE COURT: Okay.

10          MR. ROSSMILLER: Your Honor, if I may very briefly?

11          THE COURT: Yes.

12          MR. ROSSMILLER: The crux of the defense argument here  
13 I think cuts precisely the other way. They are arguing that  
14 the Southern District of Florida has sort of sent up a flag  
15 that these prosecutions could be undertaken elsewhere. That's  
16 true. The Southern District of Florida has argued in papers  
17 that they believed, the Southern District of Florida believed,  
18 that the nonprosecution agreement was limited to that district.  
19 They have said that out loud and in public and in their  
20 positions in filing.

21               So certainly this investigation was not shoveled to  
22 the Southern District of New York from anywhere else, including  
23 the Department of Justice. We expect that the nonprosecution  
24 agreement will not be an impediment, in particular because the  
25 defendant certainly did not lack for sophisticated counsel in

1 negotiating that agreement, which again did not include the  
2 Southern District of New York. We don't expect that to be any  
3 impediment at all here.

4 THE COURT: Got it.

5 This is a small item. In the pretrial services report  
6 which was prepared today -- how many, if more than one,  
7 passports does Mr. Epstein have?

8 MR. WEINGARTEN: Mr. Epstein reported today one. Two  
9 others were rescinded. As we understand it, there is one  
10 effective passport today.

11 I would like to make one other point about the  
12 pretrial that is extremely important.

13 THE COURT: Go ahead.

14 MR. WEINGARTEN: The way it reads is that we have  
15 refused to provide information about income and assets.

16 THE COURT: I didn't really read it that way myself.  
17 I thought it was incomplete in some places and I thought it  
18 could be beefed up, so to speak. But I imagine that in the  
19 bail application those matters may be dealt with.

20 MR. WEINGARTEN: Exactly.

21 THE COURT: For Mr. Rossmiller: In your letter you  
22 describe some obstruction or harassment, witness tampering,  
23 alleged, by Mr. Epstein. That, I take it, is going to be  
24 included in any response or any bail submission made by the  
25 government?

1           MR. ROSSMILLER: Your Honor, I think we addressed that  
2 in our initial submission. To the extent defense counsel has a  
3 response to it, we will evaluate that response and see whether  
4 additional submission from the government is required or  
5 appropriate.

6           THE COURT: I think that's it for me in terms of  
7 questions that I might have had.

8           There is, of course, a conspiracy charge here, one of  
9 the two counts. It may be early in your investigation to know.  
10 Do you anticipate that there may be other defendants in this  
11 proceeding?

12          MR. ROSSMILLER: Your Honor, we don't expect any  
13 imminent superseding indictments in this case. It certainly is  
14 possible down the road.

15          MR. WEINGARTEN: May I make one point, your Honor?  
16 These obstruction allegations we find very nettlesome and  
17 bothering. My understanding is that the Feds and Mr. Epstein's  
18 attorneys back in the early 2000s, or 2007 and 8, when they  
19 were negotiating were looking desperately for an appropriate  
20 statute. They finally settled on a state statute that Mr.  
21 Epstein pled to. We all know how unusual that is. There was  
22 some consideration of a federal statute, including obstruction.

23          So lawyers in good faith were having discussions back  
24 and forth whether or not they could squeeze Mr. Epstein's  
25 conduct into a particular statute, and they concluded they

1 couldn't because the facts didn't fit. That is my  
2 understanding of how those obstruction discussions arose.

3 THE COURT: Got it.

4 In terms of bail application, it would be helpful, and  
5 maybe this is your anticipation, to file written submissions.  
6 If you could do that. What I'm getting to is Thursday  
7 afternoon is not a good time, in my opinion. I would prefer to  
8 do it, if you would go along with this, Monday morning at, say,  
9 9:30. That would give everybody more time to make these  
10 submissions and to study them. Is that agreeable?

11 MR. WEINGARTEN: Yes.

12 MR. WEINBERG: Yes.

13 THE COURT: Why don't we say Monday at 10:00. Have  
14 you arranged written submissions on any time schedule with  
15 Magistrate Judge Pitman?

16 MR. ROSSMILLER: May we have just a moment, your  
17 Honor, with defense counsel?

18 THE COURT: Yes, would you. And also determine if one  
19 party or the other is going first and that the other is  
20 responding or they are simultaneous.

21 MR. ROSSMILLER: Yes, your Honor. Thank you.

22 (Pause)

23 MR. ROSSMILLER: Your Honor, the government is  
24 prepared to rely on its initial submission at least for its  
25 first argument. I expect defense counsel will respond to that

1 and propose a package. Then the government would like an  
2 opportunity to reply to that submission.

3 The parties would be happy to make those deadlines  
4 Thursday and Saturday respectively. However, we are also happy  
5 to back that up a little bit if the Court prefers not to  
6 receive the government's submission over the weekend. We could  
7 do an earlier deadline on Thursday for defense and a late  
8 Friday deadline for the Court from the government, depending on  
9 what the Court prefers.

10 THE COURT: I was going to propose defense Thursday at  
11 noon. Is that okay to get your submission in?

12 MR. WEINBERG: We can do that, your Honor.

13 THE COURT: Thanks.

14 And if you could respond Friday by 5:00 p.m.

15 MR. ROSSMILLER: We will, your Honor. Thank you.

16 THE COURT: Then we can have oral presentations. I  
17 take it everybody wants to have oral presentations in addition  
18 to the written. I'll set aside as much time as we need on the  
19 15th at 10:00.

20 I ask the government if there is a speedy trial issue  
21 or application that takes us to Monday at 10:00 a.m.

22 MR. ROSSMILLER: Yes, your Honor. The government asks  
23 that speedy trial time be excluded until Monday. We do expect  
24 to begin the process of working on producing discovery, to  
25 include discussions with defense counsel about a protective



1 order. I think, frankly, the outcome of that will be effected  
2 by the coming week. But we do expect to have those  
3 conversations and therefore request that speedy trial time be  
4 excluded until Monday.

5 THE COURT: I am going to find under 18 United States  
6 Code 3161 that the request for adjournment, joined in by both  
7 sides, to and including Monday the 15th at 10:00 a.m., is  
8 appropriate and warrants exclusion of the adjourned time from  
9 speedy trial calculations.

10 I further find that the exclusion is designed to  
11 prevent any possible miscarriage of justice to facilitate these  
12 proceedings and, initially at least, so that counsel has time  
13 to prepare written bail submission and to guarantee effective  
14 representation of and preparation by counsel for both sides.  
15 Thus, the need for exclusion and the ends of justice outweigh  
16 the interests of the public and the defendant in a speedy trial  
17 pursuant to 18 U.S.C. section 3161(h)(7)(A) and (B).

18 Does anybody want to add anything to today's session?

19 MR. ROSSMILLER: Your Honor. May we have one more  
20 moment with defense counsel?

21 THE COURT: Sure.

22 (Pause)

23 MR. ROSSMILLER: Nothing from the government. Your  
24 Honor.

25 THE COURT: Defense?

1           MR. WEINBERG: Nothing from the defense, your Honor.

2           THE COURT: Nice to see you all. See you on Monday.

3 Thank you.

4           (Adjourned)

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